

BORDEN CHEMICAL, INC.



October 7, 2004

Mr. Art Williams
Director
Louisville Metro Air Pollution Control District
850 Barret Avenue
Louisville, Kentucky 40204

Re: Comments on Draft Regulations for Toxic Air Containments

Dear Mr. Williams:

Please find enclosed preliminary technical comments of Borden Chemical, Inc. on the draft regulations for toxic air contaminants. Borden Chemical reserves the right to provide additional comments on the regulations when they are formally proposed.

In general, it appears the District has moved quickly to propose regulations without giving due consideration to their environmental effectiveness, cost effectiveness, scope, or impact on business. Borden Chemical requests that the numerous comments submitted by the regulated community be given serious consideration prior to formally proposing any toxic air contaminant the regulation.

Should there be any questions pertaining to this matter or need for additional information, please feel free to contact me at 502-449-6200.

Sincerely,

Cliff Hardaway
Manufacturing Business Leader

Enclosure

**BORDEN CHEMICAL, INC.'S PRELIMINARY
COMMENTS ON DRAFT STAR PROGRAM REGULATIONS
OCTOBER 7, 2004**

Regulation 1.06, Stationary Source Self-Monitoring, Emissions Inventory Development, and Reporting

Comment #1: The applicability of the emissions related data reporting is based upon permit types rather than potential or actual emissions from the installation at rule development. Rule applicability needs to be based on current emissions to encourage installations to reduce toxic air contaminant emissions to minor source levels. If an installation submitted a Title V application and implemented measures to reduce the hazardous air pollutants below the major source threshold (10 tons per year individual HAP and/or 25 tons per year total HAPs), the installation should not be in the same category for the toxic air contaminants program as installations at or greater than the major source level. The regulations should be revised to base applicability on the potential or actual HAP emissions from installations at the time the regulations are being put in place. Borden Chemical has applied for a Title V permit but is a minor source of HAPs and criteria pollutants. Therefore, it should not be considered a Group 1 Stationary Source under the new regulations. The District should clarify that only major sources subject to Regulation 2.16 will be considered a Group 1 Stationary Source.

Regulation 1.07, Excess Emissions During Startups, Shutdowns, and Malfunctions

Comment #1 – The definition of “excess emissions” includes the following statement, “If there is not an applicable emission standard for a toxic air contaminant established pursuant to the requirements of Regulation 5.21 - - *Environmental Acceptability for Toxic Air Contaminants*, then, for the purpose of the notification and reporting requirements of this regulation, excess emissions shall also include an appreciable increase in the emissions of a toxic air contaminant above the routine level of emissions that results from a startup, shutdown, or malfunction”. The phrase “appreciable increase” is a vague, unclear term. To minimize confusion for affected sources and the public, the phrase “appreciable increase” needs to be defined. A suggested definition for “appreciable increase” is any amount above a reportable quantity reportable pursuant to CERCLA or EPCRA emergency reporting provisions.

Comment #2: The draft regulation requires installations to notify the District if any excess emissions are expected to occur during a planned or unplanned startup or shutdown or malfunction. The installation must then provide a follow-up regardless of whether excess emissions did or did not occur. The draft regulation creates an additional burden on the Louisville Metropolitan Air Pollution Control District (LMAPCD) to distinguish between reports regarding

whether releases did or did not occur, without providing an environmental benefit. It is unproductive for installations to supply and for the LMAPCD to review reports regarding excess emission releases that did not occur. The draft regulation should be revised to remove unproductive reporting requirements regarding the initial notification and the follow-up report when no excess emissions occurred during startups, shutdowns and/or malfunctions.

Regulation 1.20, *Malfunction Prevention Programs*

Comment #1: The definition of "affected facility" includes the following statement, "A malfunction involving the process or process equipment was reported pursuant to Regulation 1.07 Excess Emissions During Startups, Shutdowns, and Malfunctions and the District determines that the development and implementation of a malfunction prevention program is appropriate". The methodology, which the District uses to determine the development and implementation of a malfunction prevention program is appropriate, is not included in the definition or Regulation 1.20, *Malfunction Prevention Programs*. For installations and the public to clearly understand when a malfunction prevention program may be required, the District needs to include the methodology for evaluating whether the program is appropriate.

Regulation 1.21, *Enhanced Leak Detection and Repair (LDAR) Program*

Comment #1: The District has not provided justification for the increase stringency of the enhanced LDAR programs at any source, let alone minor sources. Therefore, the same comment applies as Comment #1 for regulation 1.06, *Stationary Source Self-Monitoring, Emissions Inventory Development, and Reporting*, regarding the definition of "affected facility". Enhanced leak detection should only apply, if at all, to major HAP and VOC sources.

Comment #2: If the installation demonstrates compliance with the Environmental Acceptability in regulation 5.21, *Environmental Acceptability for Toxic Air Contaminants*, it should not be subject to the requirements of regulation 1.21, *Enhanced Leak Detection and Repair Program*. The regulation should be revised to change the definition of "affected facility" or provide an exemption for installations which demonstrate compliance with regulation 5.21, *Environmental Acceptability for Toxic Air Contaminants*.

Comment #3: First, the independent third party audits are entirely unnecessary and not justified. Second, the definition of "independent third party" includes the following statement, "If the routine monitoring at an affected facility is done by a contractor rather than by in-house personnel, then the independent third party shall not be the contractor that did the routine monitoring nor have ownership or

other financial interest in that contractor". The above statement is confusing. Does the statement mean that if a contractor does the routine monitoring that the independent third party shall have no association (ownership or financial) with the contractor conducting the routine monitoring? If so, please revise the definition of "independent third party" to the following: an entity in which the owner or operator (including any subsidiary, parent company, sister company, or joint venture) of the affected facility has no ownership or other financial interest. If the routine monitoring at an affected facility is done by a contractor rather than by in-house personnel, then the independent third party shall not be the contractor conducting the routine monitoring nor shall they have any association (ownership or financial interest) in the routine monitoring contractor.

Comment #4: Section 5.2 states the following: "A pump, compressor, or agitator installed on or after July 1, 2006, shall be equipped with a shaft sealing system that prevents or detects the emission of VOCs from the seal". If an installation installs pumps, compressors and agitators after July 1, 2006, does the installation have the option of choosing which piece of equipment will need the shaft sealing system?

Comment #5: Section 6 of the regulation discusses LDAR program training being provided by the LDAR coordinator. The regulation does not provide any detail or criteria on the LDAR Program Training. The regulation is vague regarding the LDAR program training and needs to be revised to identify the expected criteria to be covered during the LDAR program training.

Comment #6: Section 8 of the regulation discusses exemptions from the regulation. One of the exemptions listed is "Components in continuous vacuum service". There is no definition of continuous vacuum service in the LMAPCD regulations. The phrase "continuous vacuum service" is a vague, unclear term. To minimize confusion for affected sources and the public, the phrase "continuous vacuum service" needs to be defined.

Comment #7: Section 13 of the regulation discusses development of a leak detection and repair (LDAR) plan. Several installations subject to this regulation are subject to LDAR programs under the federal regulations. The regulation should provide the opportunity for affected sources to incorporate applicable portions of the LDAR programs for the federal regulations by reference into the LMAPCD LDAR plan. This would streamline implementation of the requirements for the affected sources and reduce review time and file storage space for the LMAPCD.

Regulation 2.08, Emissions Fees, Permit Fees, Permit Renewal Procedures, and Additional Program Fees

Comment #1: Section 6 of the regulation discusses additional program fees for the Toxic Air Contaminant program. The applicability of the additional program fees should be based on the potential or actual emissions of the toxic air contaminants rather than permit type. Please refer to comment #1 for regulation 1.06, *Stationary Source Self-Monitoring, Emissions Inventory Development, and Reporting*, regarding the definition of "affected facility". The same issues surrounding the definition of "affected facility" apply to the trigger level for Toxic Air Contaminant program fees.

Regulation 3.01, Ambient Air Quality Standards

Comment #1: The amendments to Regulation 3.01, *Ambient Air Quality Standards*, have simplified language regarding how the standards are achieved. The amendments could lead to confusion or differences between the District and EPA on whether or not an area is in attainment with ambient air quality standards. These differences could result in legal battles or trigger non-attainment requirements of sanctions that could dampen growth of business in the Louisville area. To minimize the possibility of different interpretations and confusion, the District should refer to the EPA regulations rather than their own definitions of when a standard is achieved.

Regulation 5.01, Standards for Toxic Air Contaminants and Hazardous Air Pollutants

Comment #1: The definitions of "Group 1 stationary source" and "Group 2 stationary source" are based on permit types. Please refer to comment #1 for regulation 1.06, *Stationary Source Self-Monitoring, Emissions Inventory Development, and Reporting*, regarding the definition of "affected facility". The same issues surrounding the definition of "affected facility" apply to the definitions of "Group 1 stationary source" and "Group 2 stationary source" - i.e., minor HAP sources should not be included as Group 1 stationary sources.

Comment #2: The definition of "New or modified" process or process equipment" is unclear and confusing. To minimize confusion for an affected source and the public additional clarification should be provided. In addition, it appears there may be a typographical error in the cut off date (June 30, 2004) of the second paragraph of the definition. Since June 30, 2004, has passed and the rule will not be effective by June 30, 2004, the District should not base definitions upon construction permits received before June 30, 2004. The District may want to

consider replacing June 30, 2004 with the effective date of Version 4 of this regulation, similar to the first paragraph of the definition.

Regulation 5.20, Methodology for Determining Benchmark Ambient Concentration of a Toxic Air Contaminant

Comment #1: Section 3.3 identifies criteria for the derivation of a unit risk estimate. The District accepts unit risk estimates that have been developed by the United States Environmental Protection Agency (USEPA) and included in the EPA's Integrated Risk Information System (IRIS). The District needs to address the issues surrounding the USEPA IRIS unit risk factors that have been re-evaluated by EPA but not yet adopted in IRIS.

In 1987, the USEPA IRIS unit risk factor for formaldehyde was 1.3×10^{-2} (1/mg/m³). In 1991, the USEPA re-evaluated the inhalation risk value for formaldehyde at a value of 2.6×10^{-5} (1/mg/m³). The re-evaluated value for formaldehyde was developed and reviewed by EPA, but has not been officially adopted to replace the 1987 value. Based on the re-evaluated value, formaldehyde is not a risk driver; in fact the estimated risk is 1 to 2 orders of magnitude below the one in a million guideline.

Installations should not be penalized or regulated more stringently due to the inability of EPA to adopt re-evaluated unit risk factors into IRIS in a timely manner. The District should allow for the utilization of re-evaluated unit risk factors that are awaiting adoption into USEPA IRIS. Failure to recognize and utilize the more current inhalation risk value is unscientific and arbitrary.

Regulation 5.21, Environmental Acceptability for Toxic Air Contaminants

Comment #1: Section 2 contains tables with Ambient Goals or Standards for environmental acceptability for toxic air contaminants. However, neither term (ambient goals or ambient standards) is defined in the regulation. The rule implies that goals can be modified, but the standards are lines which cannot be exceeded. To provide clarification and minimize confusion, the LMAPCD needs to define both terms.

Comment #2: Section 3.1.1.2 identifies the date (June 30, 2006) for demonstrating compliance with the environmental acceptability levels for Category 1A toxic air contaminants from Group 1 stationary sources. The compliance date should be extended so that it occurs after the requirement to submit the enhanced emission statement (July 15, 2006 per Regulation 1.05, Section 4.2.1.2). The information in the enhanced emission statement is beneficial for completing an accurate environmental acceptability level evaluation. The data obtained in the enhanced emission statement provides many

of the dispersion model input parameters, therefore the submittal dates need to be revised so the facilities have the best data available.

Comment #3: Sections 3.11 and 3.13 include provisions for the District to require a facility to evaluate or re-evaluate compliance with the environmental acceptability levels and lower emissions if not in compliance if new data becomes available on the toxicity of a compound or if the District determines that ambient air levels are unacceptable. The regulation does not provide an alternative mechanism if the facility has recently conducted an evaluation and installed controls. The regulated community needs to be afforded a time frame prior to re-evaluation of the environmental acceptability after successful completion of an evaluation. A suggested time period for which a facility cannot be required to evaluate environmental acceptability levels is if an evaluation has occurred in the last seven years. The time periods prior to re-evaluation need to be based on a separate time period if controls were installed. Facilities need a degree of certainty that if they make an investment in controls that they will have some time period before being required to make additional investments. A suggested time period for which a facility cannot be required to install additional controls if controls have been installed in the last ten years, this is consistent with the New Source Review Clean Unit Designation.